

#### REMARKS

Reconsideration and allowance are respectfully requested in light of the above amendments and the following remarks.

Claims 1-10 are pending. Claims 1, 2 and 8 have been amended for clarity and to broaden them. New claims 9 and 10 are supported at least by the present specification at page 8, line 20 to page 9, line 25.

Claims 1-3 and 6-8 stand rejected under 35 USC § 102(b) as being anticipated by JP 09-092279. The Office Action asserts that each feature of the rejected claims is taught by the cited reference. Applicants respectfully traverse.

As recited by the present claims, the present invention is directed to a battery comprising a nickel positive electrode, the nickel positive electrode including nickel hydroxide particles at least one rare earth compound formed by treating a rare earth oxide with an aqueous alkaline solution and an oxidizing agent. Thus, the battery of the present invention includes a rare earth compound having characteristics produced by treating a rare earth oxide with an aqueous alkaline solution and an oxidizing agent. In contrast, while the positive electrode active material of JP '279 includes a rare earth oxide, it is nevertheless different from the positive electrode active material recited by the present claims.

Although the rare earth oxide of the reference contacts with an aqueous alkaline solution (electrolyte) in the battery of JP '279, the rare earth oxide is affected by an oxidation-reduction reaction therein. As a result, the rare earth oxide of the battery JP '279 is treated differently from the rare earth compound of the present invention. Applicants provide the following translation of section 0007 of JP '279:

#### Embodiments of the Invention

The present invention is explained based on the following examples.

##### Example 1

For example, commercially available nickel hydroxide which does not contain cadmium was obtained. To the nickel hydroxide powder, 6 wt% of metal Co and 4 wt% of CoO were added as conductive agents. Further, for example, 2.5 wt% of  $\text{Yb}_2\text{O}_3$  was added and mixed sufficiently. To the mixture, water and a thickener were added to form a paste. The paste was filled in, for example a nickel fibre substrate, dried and pressed to obtain a nickel positive electrode of the present invention. A nickel hydride storage battery was prepared using a common hydrogen absorbing alloy as a counter electrode and using an alkaline electrolyte.

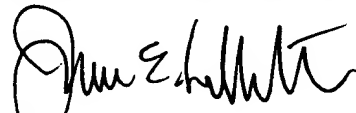
From the above excerpt, it is clear that  $\text{Yb}_2\text{O}_3$  was not treated with an aqueous alkaline solution and an oxidizing agent before assembling the battery. Thus, it is clear that JP '279 does not teach each feature recited by the present claims.

In light of the foregoing, it is respectfully submitted that all rejections are overcome and that all pending claims are

directed to allowable subject matter. Thus, a Notice of Allowance is respectfully requested.

If any issues remain which may best be resolved through a telephone communication, the Examiner is requested to telephone the undersigned at the local Washington, D.C. telephone number listed below.

Respectfully submitted,



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